STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA WILLIAMS, Personal Representative of the Estate of SHAUNA RENEE ANDERSON, deceased,

Plaintiff-Appellant,

v

NORTHVILLE REGIONAL PSYCHIATRIC HOSPITAL, LINDA BROWN, JOHN DOE, SUSHILA AGGARWAL, M.D., and TARIQ A. ABBASI, M.D.,

Defendants-Appellees.

UNPUBLISHED
June 17, 1997

No. 193038
Wayne Circuit Court
LC No. 94-410507-NH

Before: Mackenzie, P.J., and Neff and Markey, JJ.

PER CURIAM.

Plaintiff, Patricia Williams, personal representative of the estate of Shauna Renee Anderson, deceased, appeals as of right from the trial court order granting summary disposition to the individually named defendants pursuant to MCR 2.116 (C)(10). We affirm.

Plaintiff filed suit against Northville Regional Psychiatric Hospital and its employees Brown, Aggarwal, and Abbasi, alleging that plaintiff's brother, Eric Williams, was admitted to Northville Regional following an assault on plaintiff, that defendants wrongfully released her brother and failed to warn her daughter, the decedent, of the risk of harm to her because of the release, and that these actions proximately caused the decedent's murder by Williams. Defendants moved for summary disposition, arguing that there were no facts to support the allegation that defendants owed decedent a duty of care. The trial court granted defendants' motion because no special relationship existed to establish duty.

Plaintiff's first argument on appeal is that the trial court erred in denying her motion to compel the production of all of William's medical records from Northville Regional. We disagree. "A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or

deny a discovery motion will be reversed only if there has been an abuse of that discretion." *Linebaugh v Sheraton Michigan Corporation*, 198 Mich App 335, 343; 497 NW2d 585 (1993). Plaintiff claims that her action is in part based upon malpractice, and relies on MCL 330.1750(3)(d); MSA 14.800(750)(3)(d), which provides for the disclosure of privileged communications between a psychiatrist and patient "[i]n a civil or criminal action against the psychiatrist or psychologist for malpractice."

In the case at bar, the patient whose records are sought, Williams, is not the person requesting the records and is not even a party to the action. The statute as written at the time of plaintiff's motion to compel production did not indicate one way or the other whether it applied to malpractice actions in which the patient was not a party, although a subsequent amendment provided for disclosure in a malpractice action "by or on behalf of the patient." It appears that this Court has not previously considered whether the language of the statute before the amendment applies to malpractice actions in which the patient is not a party.

In construing § 750(3)(d), we must take into account MCL 600.2157; MSA 27A.2157, which precludes disclosure of information subject to the physician-patient privilege and provides an exception for when the patient brings a malpractice action and produces a physician as a witness. The privilege under this statute has been held to apply to medical records of a public mental institution. *People v Lapsley*, 26 Mich App 424, 429; 182 NW2d 601 (1970). This Court has held that § 2157 prohibits the production in a malpractice action of medical records of a patient who is not a party. See *Popp v Crittenton Hospital*, 181 Mich App 662, 665; 449 NW2d 678 (1989). Therefore, in the case at bar, § 2157 prohibits the production of Eric Williams' medical records from Northville Regional because he is not a party to the action.

Statutes "which refer to the same class of persons or things or share a common objective must be interpreted to be complementary and not contradictory." *Skidmore v Czapiga*, 82 Mich App 689, 691; 267 NW2d 150 (1978). Where "a statute can be construed as consistent or inconsistent with other statutory provisions the courts should construe the provisions as consistent with one another." *People v Knox*, 115 Mich App 508, 513; 321 NW2d 713 (1982). Under these principles of statutory construction, we construe § 750(3)(d) to be consistent with § 2157 and hold that even before it was amended, it only allowed disclosure in malpractice actions brought by or on behalf of the patient.

Plaintiff further argues that production of the records was required by § 750(5), which provides that privileged communications "may be disclosed pursuant to section 946 to comply with the duty set forth in that section." We do not read that provision as requiring production in the course of litigation. Rather, it refers to the duty of a mental health practitioner to warn a readily identifiable third party if the patient has threatened to harm the third party. Because this subsection by its terms does not provide for production in the course of litigation, plaintiff's reliance on it is misplaced. We therefore hold that the trial court did not abuse its discretion in denying plaintiff's motion for production of Williams' medical records.

Plaintiff's second argument on appeal is that the trial court erred by limiting the scope of discovery as to certain interrogatories asking whether Williams made threats of harm to decedent. Plaintiff argues that the trial court should have compelled answers to interrogatories to allow plaintiff to discover whether Williams threatened a class of persons of which the decedent was a member, such as the patient's family. We disagree. The trial court did not abuse its discretion in refusing to compel discovery of privileged matters that were not relevant. Defendants owed a duty of care "to only those persons readily identifiable as foreseeably endangered." *Davis v Lhim*, 124 Mich App 291, 303; 335 NW2d 481 (1983); rev'd on other grounds sub nom *Canon v Thumudo* 430 Mich 326; 422 NW2d 688 (1988). Threats against a person's family or family members do not render that person a readily identifiable victim. *Jenks v Brown*, 219 Mich App 415, 419; 557 NW2d 114 (1996); *Bardoni v Kim*, 151 Mich App 169, 182-184; 390 NW2d 218 (1986); Plaintiff's argument that the discovery permitted by the trial court was inadequate to allow her to determine whether decedent was a readily identifiable victim must therefore fail. Accordingly, we find no abuse of discretion in the trial court's order limiting discovery on certain interrogatories to whether threats were made against decedent as opposed to decedent's family.

Plaintiff's third argument on appeal is that the trial court erroneously granted summary disposition to the individual defendants on the grounds that they owed no legal duty to decedent. We disagree. Although the trial court did not specifically identify under which subrule it granted the motion, we will treat the motion as having been granted under MCR 2.116(C)(10). Such a motion tests the factual basis of plaintiff's allegations. *Baker v Arbor Drugs*, 215 Mich App 198, 202; 544 NW2d 727 (1996). This Court must view the pleadings, affidavits, depositions, admissions, and any other documentary evidence in the light most favorable to the nonmoving party. *Id*. We must then decide "whether a genuine issue regarding any material fact exists to warrant a trial." *Id*.

Plaintiff alleges gross negligence on the part of defendants in releasing Williams and failing to warn decedent. The elements of a claim for tortious injury are: "(1) the defendant must have owed a legal duty to the plaintiff; (2) the defendant must have breached the duty owed; (3) there must have been a proximate causal relationship between the breach of such duty and the injury to the plaintiff; and (4) the plaintiff must have suffered damages." *Marcelletti v Bathani*, 198 Mich App 655, 658; 500 NW2d 124 (1993). Whether a duty exists is a question of law for the trial court to decide. *Id*. at 658-659. An individual generally has no legal obligation to protect another from the acts of a third party. *Id*. at 664. However, "[a] duty of reasonable care may arise where one stands in a special relationship with either the victim or the person causing the injury." *Jenks, supra* at 421. A psychiatrist's duty of care in the type of situation in the case at bar is owed only to those persons who are readily identifiable as foreseeably endangered. *Id*.

Plaintiff alleges that defendants had a special relationship with decedent in that she was a readily identifiable, foreseeable potential victim of Williams. Plaintiff has failed to provide any documentary evidence to support that allegation. Defendants have provided affidavits of the three individual defendants indicating that Williams never made any threats against decedent and that defendants never had any contact with or heard of decedent before her death. After the trial court granted summary

disposition, plaintiff moved for rehearing and provided an affidavit of a witness who claims he saw Williams strike decedent before his treatment at Northville Regional.

This evidence fails to establish a genuine issue of material fact that decedent was "readily identifiable as foreseeably endangered." *Id*. "Danger to a third person is foreseeable only where the psychiatrist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another." *Id*. Accepting as true the affidavit that Williams had assaulted decedent, this evidence fails to establish that defendants knew or should have known of such an incident. Plaintiff has therefore failed to establish an issue of fact as to whether defendants knew or should have known of a serious danger of violence to decedent.

Plaintiff has also failed to establish a genuine issue of material fact for her claim under MCL 330.1946; MSA 14.800(946), which requires a mental health professional to warn a third person or to contact the police if a patient makes "a threat of physical violence against a reasonably identifiable third person and the [patient] has the apparent intent and ability to carry out that threat in the foreseeable future." Plaintiff has offered no evidence of any threats made by Williams while at Northville Regional. Plaintiff has offered no evidence to contradict defendants' affidavits that they had never heard of decedent before her death and has therefore failed to establish a genuine issue of material fact that decedent was a reasonably identifiable third person who Williams threatened.

Finally, plaintiff argues that the readily identifiable standard for establishing a special relationship does not apply to allegations of negligently discharging a patient. This argument is contradicted by *Davis, supra*, which is the seminal case establishing that a duty is owed only to those persons readily identifiable as foreseeably endangered. *Davis, supra* at 303. *Davis* involved both a claim of failure to warn and a claim that the defendant negligently authorized the discharge of the patient. *Id*. at 296. This Court did not make any distinction between the two claims in holding that a duty is owed only to those persons who are readily identifiable as foreseeably endangered. *Id*. at 303-305.

The trial court therefore properly granted summary disposition to the individual defendants because plaintiff failed to establish a genuine issue of material fact as to whether decedent was readily identifiable as foreseeably endangered by Williams.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Janet T. Neff
/s/ Jane E. Markey